

## Federal Communications Commission

FCC MAIL SECTION

DA 98-691

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

DISPATCHED

In the Matter of )

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.

(Hague, New York, and Addison, Vermont) )

MM Docket No. 98-52  
RM-9239

**NOTICE OF PROPOSED RULE MAKING****Adopted: April 8, 1998****Released: April 17, 1998**

Comment Date: June 8, 1998

Reply Comment Date: June 23, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by John Anthony Bulmer ("petitioner") requesting the substitution of Channel 229C3 for Channel 229A at Hague, New York, the reallotment of Channel 229C3 to Addison, Vermont, as the community's first local aural service, and the modification of petitioner's construction permit for Station WWFY to specify Addison as its community of license. Petitioner states that it will apply for the channel, if allotted.

2. Petitioner filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that Addison is listed in the 1990 U.S. Census, attributed with a population of 1,023 persons, and not located within any metropolitan area. Hague, on the other hand, has a 1990 U.S. Census population of 699 persons, which is less than 70% of Addison's population. Petitioner states that Addison has a Town Hall and an employed Town Clerk, as well as its own fire department, and local children attend the Addison Central School. Addison is also home to the Addison Community Baptist Church, and a number of businesses, such as the Addison Four Corner's Store and the West Addison Country Store and Laundromat.

3. Petitioner points out that Channel 229A is the only aural broadcast channel allotted to Hague. However, it states that this fact is not a bar to the reallotment since Station WWFY is an unbuilt station and thus the public has not come to rely on its service, citing Midway, Panacea and Quincy, Florida, 10 FCC Rcd 6112 (1995). Further, petitioner states that the

allotment of Channel 229C3 to Addison will result in a preferential arrangement of allotments since it will enable Station WWFY to increase the population it serves from its present 24,104 persons within 2,516 square kilometers to 58,636 persons within an area of 4,803 square kilometers. In addition, if reallocated, Station WWFY will provide a second fulltime aural service to an area encompassing 74.2 square kilometers containing 40 people, a third fulltime service to 59 people within a 124 square kilometer area, a fourth such service to 116 people within a 74 square kilometer area, and a fifth fulltime service to 225 people within a 113 square kilometer area. If Channel 229 is reallocated to Addison, petitioner recognizes that there will be a potential loss area of 909 square kilometers with 10,092 people. However, it states that of this total, 6,409 people will continue to receive five or more fulltime aural services, 1,900 people will continue to receive four fulltime aural services, 1,617 people will receive three such services and 66 people will receive two such services. According to the petitioner, no one will receive less than two fulltime services.

4. We do not generally believe that the public interest is served by removing a community's sole local service only to provide a first transmission service to another community. Here, because Station WWFY has not been constructed, it does not provide a service which the public has come to rely on. Thus, while the Commission is concerned about the loss of potential service, it does not raise the same level of concern as when the station is operating. Further, based on the information provided by the petitioner, it appears that the reallocation will provide service to an area, although small, which presently receives only one fulltime service, thus fulfilling the second highest allotment priority.<sup>1</sup> Therefore, we believe the public interest would be served by seeking comments on petitioner's proposal.

5. Channel 229C3 can be allotted to Addison, Vermont, in compliance with the Commission's minimum distance separation requirements, with respect to all domestic allotments, with a site restriction of 14.2 kilometers (8.8 miles) west to accommodate petitioner's desired transmitter site.<sup>2</sup> The allotment will result in a short-spacing to Station CBM-FM, Channel 228C1, Montreal, Quebec, Canada. Therefore, since Addison is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence in the allotment as a specially negotiated short-spaced allotment will be sought from the Canadian government.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

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<sup>1</sup> The FM allotment priorities are: (2) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 91 (1982).

<sup>2</sup> The coordinates for Channel 229C3 at Addison are 44-02-30 North Latitude; 73-28-00 West Longitude.

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<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Hague, New York	229A	--
Addison, Vermont	--	229C3

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before June 8, 1998, and reply comments on or before June 23, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Jerrold Miller  
Miller & Miller, P.C.  
1990 M Street, N.W., Suite 760  
Washington, D.C. 20036  
(Counsel to petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes

an ex parte presentation and shall not be considered in the proceeding.

**FEDERAL COMMUNICATIONS COMMISSION**

**John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau**

**Attachment: Appendix**

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**APPENDIX**

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.